

AMENDED IN SENATE MAY 17, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1634**

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**Introduced by Committee on Revenue and Taxation (Knox  
(Chair), Kaloogian (Vice Chair), Aroner, Briggs, Ducheny,  
Honda, and Romero)**

March 3, 1999

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An act to amend Sections 1088, *13021*, *13028*, and 13050 of, and to add Section 13009.5 to, the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, as amended, Committee on Revenue and Taxation. Taxation: unemployment insurance benefits: wages.

Existing unemployment insurance law requires each employer to file a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages.

This bill would require the report and statement to include the total amount of wages subject to personal income tax, *as provided*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1088 of the Unemployment  
2 Insurance Code is amended to read:

3 1088. (a) (1) Each employer shall file with the  
4 director within the time required by subdivision (a) or  
5 (d) of Section 1110 for payment of employer  
6 contributions, a report of contributions and a report of  
7 wages paid to his or her workers in the form and  
8 containing any information as the director prescribes. An  
9 electronic funds transfer of contributions pursuant to  
10 subdivision (f) of Section 1110 shall satisfy the  
11 requirement for a report of contributions. The report of  
12 wages shall include individual amounts required to be  
13 withheld under Section 13020 *or withheld under Section*  
14 *13028.*

15 (2) (A) In order to enhance efforts to reduce tax fraud  
16 and to reduce the personal income tax reporting burden,  
17 effective January 1, 1997, the report of wages shall also  
18 include the full first name of the employee and total  
19 wages, as defined in Section 13009, paid to each employee.  
20 This paragraph shall apply to reports of wages for all  
21 periods ending on or before December 31, 1999.

22 (B) For all periods beginning on or after January 1,  
23 2000, the report of wages shall also include total wages  
24 subject to personal income tax, as defined in Section  
25 13009.5, paid to each employee.

26 (b) Each employer shall file with the director within  
27 the time required by subdivision (b) or (d) of Section  
28 1110 for payment of worker contributions, a report of  
29 contributions containing the employer's business name,  
30 address, and account number, the total amount of worker  
31 contributions due, and any other information as the  
32 director shall prescribe. The director shall prescribe the  
33 form for the report of contributions. An electronic funds  
34 transfer of contributions pursuant to subdivision (f) of  
35 Section 1110 shall satisfy the requirement for a report of  
36 contributions.

37 (c) In addition to the report of contributions and  
38 report of wages required by employers under subdivision

(a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a separate report of contributions, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) In addition to the report of contributions and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020 *or withheld under Section 13028*, and any other information as the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(f) For purposes of making a report of wages under subdivision (a), employers who are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) Submit a magnetic media format to the department for approval, and upon receiving approval from the department, submit any subsequent reports of wages on magnetic media.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media information returns for federal purposes, or other good cause for not complying with the provisions of this

1 subdivision. Approved waivers shall be valid for six  
2 months or longer, at the discretion of the director.

3 (g) The Franchise Tax Board shall be allowed access to  
4 the information filed with the department pursuant to  
5 this section.

6 (h) If an employer demonstrates that an undue  
7 hardship would be imposed, the director may authorize  
8 an exemption from the requirement in subdivision (a) to  
9 report individual amounts withheld under Section 13020  
10 and the requirement in subdivision (e) to file the annual  
11 reconciliation return for the 1995 calendar year only. Any  
12 request for exemption must be filed on or before January  
13 15, 1995. Upon approval of a request for exemption under  
14 this subdivision, the employer shall file quarterly returns  
15 and reports of wages in the manner and method  
16 prescribed by the director for the 1995 calendar year only.

17 SEC. 2. Section 13009.5 is added to the  
18 Unemployment Insurance Code, to read:

19 13009.5. (a) For purposes of the report required by  
20 subdivision (a) of Section 1088 and the statement  
21 required by Section 13050, “wages subject to personal  
22 income tax” means all of the following:

23 (1) Remuneration defined as wages by Section 13009,  
24 except that in the case of tips received by an employee in  
25 the course of his or her employment, the amounts shall  
26 include only those tips included in statements furnished  
27 to the employer, pursuant to Section 13055.

28 (2) Remuneration described in subdivisions (a), (b),  
29 (f), and (l) of Section 13009, to the extent included in  
30 gross income.

31 (3) Payments made by a third party for sick pay as  
32 specified in Section 931.5.

33 (A) Any employer who receives a report of wages  
34 from a third-party payer as provided for in subdivisions  
35 (a) and (b) of Section 931.5 shall report those wages to the  
36 department as required under paragraph (2) of  
37 subdivision (a) of Section 1088.

38 (B) Any third-party payer described in Section 931.5  
39 who fails to report wages to an employer as provided for  
40 in that section shall report those wages to the department

1 as required under paragraph (2) of subdivision (a) of  
2 Section 1088.

3 (b) (1) A person or entity shall not be required to  
4 register with the Employment Development  
5 Department solely for the purpose of reporting wages  
6 subject to personal income tax pursuant to Section 1088  
7 unless that registration is otherwise required by this code.

8 (2) A person or entity shall not be required to withhold  
9 any tax under Section 13020 for wages, as defined by this  
10 section, unless that person or entity is required to  
11 withhold tax for those wages as defined by Section 13009.

12 SEC. 3. *Section 13021 of the Unemployment*  
13 *Insurance Code is amended to read:*

14 13021. (a) Every employer required to withhold any  
15 tax under Section 13020 shall for each calendar quarter,  
16 whether or not wages or payments are paid in the  
17 quarter, file a withholding report and a report of wages  
18 in a form prescribed by the department, and pay over the  
19 taxes so required to be withheld. The report of wages shall  
20 include individual amounts required to be withheld  
21 under Section 13020 *or withheld under Section 13028*.  
22 Except as provided in subdivisions (c) and (d) of this  
23 section, the employer shall file a withholding report and  
24 remit the total amount of income taxes withheld during  
25 the calendar quarter on or before the last day of the  
26 month following the close of the calendar quarter.

27 (b) Every employer electing to file a single annual  
28 return under subdivision (d) of Section 1110 shall report  
29 and pay any taxes withheld under Section 13020 on an  
30 annual basis within the time specified in subdivision (d)  
31 of Section 1110.

32 (c) (1) Effective January 1, 1995, whenever an  
33 employer is required, for federal income tax purposes, to  
34 remit the total amount of withheld federal income tax in  
35 accordance with Section 6302 of the Internal Revenue  
36 Code and regulations thereunder, and the accumulated  
37 amount of state income tax withheld is more than five  
38 hundred dollars (\$500), the employer shall remit the total  
39 amount of income tax withheld for state income tax  
40 purposes within the number of banking days as specified

1 for withheld federal income taxes by Section 6302 of the  
2 Internal Revenue Code, and regulations thereunder.

3 (2) Effective January 1, 1996, the five hundred dollar  
4 (\$500) amount referred to in paragraph (1) shall be  
5 adjusted annually as follows, based on the annual average  
6 rate of interest earned on the Pooled Money Investment  
7 Fund as of June 30 in the prior fiscal year:

8

9 Average Rate of Interest

10 Greater than or equal to 9 percent: \$ 75

11 Less than 9 percent, but greater than or equal to  
12 7 percent: 250

13 Less than 7 percent, but greater than or equal to  
14 4 percent: 400

15 Less than 4 percent: 500

16

17 (d) (1) Notwithstanding subdivisions (a) and (c), for  
18 calendar years beginning prior to January 1, 1995, if in the  
19 12-month period ending June 30 of the prior year the  
20 cumulative average payment made pursuant to this  
21 division or Section 1110, for ~~eight-monthly~~  
22 *eight-monthly* periods, as defined under Section 6302 of  
23 the Internal Revenue Code and regulations thereunder,  
24 was fifty thousand dollars (\$50,000) or more, the  
25 employer shall remit the total amount of income tax  
26 withheld within three banking days following the close of  
27 each ~~eight-monthly~~ *eight-monthly* period, as defined by  
28 Section 6302 of the Internal Revenue Code and  
29 regulations thereunder. For purposes of this subdivision,  
30 payment shall be made by electronic funds transfer in  
31 accordance with Section 13021.5, for one calendar year  
32 beginning on January 1. Payment is deemed complete on  
33 the date the electronic funds transfer is initiated, if  
34 settlement to the state's demand account occurs on or  
35 before the banking day following the date the transfer is  
36 initiated. If settlement to the state's demand account does  
37 not occur on or before the banking day following the date  
38 the transfer is initiated, payment is deemed complete on  
39 the date settlement occurs. The department shall, on or  
40 before October 31 of the prior year, notify all employers

1 required to make payment by electronic funds transfer of  
2 these requirements.

3 (2) Notwithstanding subdivisions (a) and (c), for  
4 calendar years beginning on or after January 1, 1995, if in  
5 the 12-month period ending June 30 of the prior year, the  
6 cumulative average payment made pursuant to this  
7 division or Section 1110 for any deposit periods, as defined  
8 under Section 6302 of the Internal Revenue Code and  
9 regulations thereunder, was twenty thousand dollars  
10 (\$20,000) or more, the employer shall remit the total  
11 amount of income tax withheld within the number of  
12 banking days as specified for federal income taxes by  
13 Section 6302 of the Internal Revenue Code and  
14 regulations thereunder. For purposes of this subdivision,  
15 payment shall be made by electronic funds transfer in  
16 accordance with Section 13021.5, for one calendar year  
17 beginning on January 1. Payment is deemed complete on  
18 the date the electronic funds transfer is initiated, if  
19 settlement to the state's demand account occurs on or  
20 before the banking day following the date the transfer is  
21 initiated. If settlement to the state's demand account does  
22 not occur on or before the banking day following the date  
23 the transfer is initiated, payment is deemed complete on  
24 the date settlement occurs. The department shall, on or  
25 before October 31 of the prior year, notify all employers  
26 required by this paragraph to make payments by  
27 electronic funds transfer of these requirements.

28 (3) Notwithstanding paragraph (2), effective January  
29 1, 1995, electronic funds transfer payments that are  
30 subject to the one-day deposit rule, as defined by Section  
31 6302 of the Internal Revenue Code and regulations  
32 thereunder, shall be deemed timely if the payment settles  
33 to the state's demand account within three banking days  
34 after the date the employer meets the threshold for the  
35 one-day deposit rule.

36 (4) Any taxpayer required to remit payments  
37 pursuant to paragraphs (1) and (2) may request from the  
38 department a waiver of those requirements. The  
39 department may grant a waiver only if it determines that  
40 the particular amounts paid in excess of fifty thousand

1 dollars (\$50,000) or twenty thousand dollars (\$20,000), as  
2 stated in paragraphs (1) and (2), respectively, were the  
3 result of an unprecedented occurrence for that  
4 employer, and were not representative of the employer's  
5 cumulative average payment in prior years.

6 (5) Any state agency required to remit payments  
7 pursuant to paragraphs (1) and (2) may request a waiver  
8 of those requirements from the department. The  
9 department may grant a waiver if it determines that  
10 there will not be a negative impact on the interest  
11 earnings of the General Fund. If there is a negative  
12 impact to the General Fund, the department may grant  
13 a waiver if the requesting state agency follows procedures  
14 designated by the department to mitigate the impact to  
15 the General Fund.

16 (e) Any employer not required to make payment  
17 pursuant to subdivision (d) of this section may elect to  
18 make payment by electronic funds transfer in accordance  
19 with Section 13021.5 under the following conditions:

20 (1) The election shall be made in a form, and shall  
21 contain information, as prescribed by the director, and  
22 shall be subject to approval by the department.

23 (2) If approved, the election shall be effective on the  
24 date specified in the notification to the employer of  
25 approval.

26 (3) The election shall be operative from the date  
27 specified in the notification of approval, and shall  
28 continue in effect until terminated by the employer or  
29 the department.

30 (4) Funds remitted by electronic funds transfer  
31 pursuant to this subdivision shall be deemed complete in  
32 accordance with subdivision (d) or as deemed  
33 appropriate by the director to encourage use of this  
34 payment method.

35 (f) Notwithstanding Section 1112, no interest or  
36 penalties shall be assessed against any employer who  
37 remits at least 95 percent of the amount required by  
38 subdivision (c) or (d), provided that the failure to remit  
39 the full amount is not willful and any remaining amount  
40 due is paid with the next payment. The director may



1 allow any employer to submit the amounts due from  
2 multiple locations upon a showing that those submissions  
3 are necessary to comply with the provisions of subdivision  
4 (c) or (d).

5 (g) The department may, if it believes that action is  
6 necessary, require any employer to make the report  
7 required by this section and pay to it the tax deducted and  
8 withheld at any time, or from time to time but no less  
9 frequently than provided for in subdivision (a).

10 (h) Any employer required to withhold any tax and  
11 who is not required to make payment under subdivision  
12 (c) shall remit the total amount of income tax withheld  
13 during each month of each calendar quarter, on or before  
14 the 15th day of the subsequent month if the income tax  
15 withheld for any of the three months or, cumulatively for  
16 two or more months, is three hundred fifty dollars (\$350)  
17 or more.

18 (i) For purposes of subdivisions (a), (c), and (h),  
19 payment is deemed complete when it is placed in a  
20 properly addressed envelope, bearing the correct  
21 postage, and it is deposited in the United States mail.

22 (j) In addition to the withholding report and report of  
23 wages described in subdivision (a), each employer shall  
24 file with the director an annual reconciliation return  
25 showing the amount required to be withheld under  
26 Section 13020, and any other information the director  
27 shall prescribe. This annual reconciliation return shall be  
28 due on the first day of January following the close of the  
29 prior calendar year and shall become delinquent if not  
30 filed on or before the last day of that month.

31 (k) If an employer demonstrates that an undue  
32 hardship would be imposed, the director may authorize  
33 an exemption from the requirement in subdivision (a) to  
34 report individual amounts withheld under Section 13020  
35 and the requirement in subdivision (j) to file the annual  
36 reconciliation return for the 1995 calendar year only. Any  
37 request for exemption must be filed on or before January  
38 15, 1995. Upon approval of a request for exemption under  
39 this subdivision, the employer shall file quarterly returns  
40 reporting the amount withheld under Section 13020, the

1 statement required to be furnished under Section 13050,  
2 and the annual return required by Section 13053, for the  
3 1995 calendar year only.

4 *SEC. 4. Section 13028 of the Unemployment*  
5 *Insurance Code is amended to read:*

6 13028. (a) (1) For purposes of this division (and so  
7 much of Part 10 (commencing with Section 17001) and  
8 Part 10.2 (commencing with Section 18401) of Division 2  
9 of the Revenue and Taxation Code as relates to this  
10 division) pensions, annuities, and other deferred income,  
11 as described in Section 3405 of the Internal Revenue  
12 Code, are wages and subject to withholding under this  
13 division. *Amounts withheld shall be treated as if the*  
14 *amounts are withheld by an employer for a payroll period*  
15 *and only amounts withheld shall be reported to the*  
16 *department pursuant to Section 1088 and Section 13021.*

17 (2) Notwithstanding paragraph (1), amounts  
18 excluded from gross income by Section 17131.5 of the  
19 Revenue and Taxation Code are not wages and are not  
20 subject to withholding under this division.

21 (b) If an individual makes an election under Section  
22 3405(a)(2) or Section 3405(b)(3) of the Internal  
23 Revenue Code not to have tax withheld, that election  
24 shall apply to withholding under this division, unless the  
25 individual elects, with the consent of the payer, to have  
26 those payments subject to withholding under this  
27 division. If an individual has not made an election under  
28 Section 3405(a)(2) or Section 3405(b)(3) of the Internal  
29 Revenue Code, that individual may elect to exclude those  
30 payments from withholding under this division. Elections  
31 provided in this subdivision shall be made pursuant to  
32 regulations of the director.

33 (c) Where Section 3405 of the Internal Revenue Code  
34 provides that tables or other computational procedures  
35 shall be prescribed by the Secretary of the Treasury, for  
36 the purposes of this division, any of the following amounts  
37 may be withheld, upon election of the payer:

38 (1) An amount determined by the method prescribed  
39 under Section 13020.

1 (2) A designated dollar amount as requested by the  
2 payee.

3 (3) Ten percent of the amount of federal withholding  
4 computed pursuant to Section 3405 of the Internal  
5 Revenue Code.

6 (d) Where the amount of withholding computed  
7 pursuant to subdivision (c) is less than ten dollars (\$10)  
8 per month, the payer shall not be required to withhold  
9 that amount.

10 (e) This section shall not apply to pensions, annuities,  
11 and other deferred income of payees with addresses  
12 outside this state, as shown on the most current records  
13 of the payer.

14 (f) The department shall, in consultation with the  
15 affected payers and payees, issue regulations to  
16 implement this section.

17 Those regulations shall provide for delay (but not  
18 beyond July 1, 1987) of the application of this section with  
19 respect to any payer or class of payers until that time as  
20 the payers are able to comply without undue hardship  
21 with the requirements of this section. In that case, no  
22 retroactive compliance shall be required.

23 *SEC. 5.* Section 13050 of the Unemployment  
24 Insurance Code is amended to read:

25 13050. (a) Every employer or person required to  
26 deduct and withhold from an employee a tax under  
27 Section 986, 3260, or 13020, or who would have been  
28 required to deduct and withhold a tax under Section  
29 13020 (determined without regard to Section 13025) if  
30 the employee had claimed no more than one withholding  
31 exemption, shall furnish to each employee in respect of  
32 the remuneration paid by the person to the employee  
33 during the calendar year, on or before January 31 of the  
34 succeeding year, or, if his or her employment is  
35 terminated before the close of the calendar year, on the  
36 day on which the last payment of remuneration is made,  
37 a written statement showing all of the following:

38 (1) The name of the person.

39 (2) The name of the employee, and his or her social  
40 security or identifying number if wages have been paid.

1 (3) The total amount of wages subject to personal  
2 income tax, as defined by Section 13009.5.

3 (4) The total amount deducted and withheld as tax  
4 under Section 13020.

5 (5) The total amount of worker contributions paid by  
6 the employee pursuant to Section 986.

7 (6) The total amount of worker contributions paid by  
8 the employee pursuant to Section 3260.

9 (7) The total amount of elective deferrals (within the  
10 meaning of Section 402(g)(3) of the Internal Revenue  
11 Code) and compensation deferred pursuant to Section  
12 457 of the Internal Revenue Code.

13 (b) The statement required to be furnished pursuant  
14 to this section in respect of any remuneration shall be  
15 furnished at other times, shall contain other information,  
16 and shall be in a form, as the department may by  
17 authorized regulations prescribe.

18 (c) (1) A duplicate of any statement made pursuant  
19 to this section and in accordance with authorized  
20 regulations prescribed by the department shall, when  
21 required by the regulations, be filed with the  
22 department.

23 (2) Effective January 1, 1995, this subdivision shall  
24 apply only to those employers exempted under  
25 subdivision (h) of Section 1088 or subdivision (k) of  
26 Section 13021 from the requirements to report individual  
27 amounts withheld on the report of wages and to file the  
28 annual reconciliation return for the 1995 calendar year  
29 only. This subdivision shall remain in effect only until  
30 March 1, 1996, and on that date is repealed, unless a later  
31 enacted statute that is enacted before March 1, 1996,  
32 deletes or extends that date.

33 (d) If, during any calendar year, any person makes a  
34 payment of third-party sick pay to an employee, that  
35 person shall, on or before January 15 of the succeeding  
36 year, furnish a written statement to the employer in  
37 respect of whom the payment was made showing all of  
38 the following:

39 (1) The name and, if there is withholding under this  
40 division, the social security number of that employee.

1 (2) The total amount of the third-party sick pay paid  
2 to that employee during the calendar year.

3 (3) The total amount, if any, deducted and withheld  
4 from that sick pay under this division. For purposes of the  
5 preceding sentence, the term “third-party sick pay”  
6 means any sick pay, as defined in subdivision (b) of  
7 Section 13028.6, which does not constitute wages for  
8 purposes of this division, determined without regard to  
9 subdivision (a) of Section 13028.6.

10 (A) The reporting requirements of subdivision (a)  
11 with respect to any payments shall, with respect to those  
12 payments, be in lieu of the requirements of subdivision  
13 (a) and of Section 18637 of the Revenue and Taxation  
14 Code.

15 (B) For purposes of Chapter 10 (commencing with  
16 Section 2101) of Part 1 of Division 1, the statements  
17 required to be furnished by this subdivision shall be  
18 treated as statements required under this section to be  
19 furnished to employees.

20 (C) Every employer who receives a statement under  
21 this subdivision with respect to sick pay paid to any  
22 employee during any calendar year shall, on or before  
23 January 31 of the succeeding year, furnish a written  
24 statement to that employee showing all of the following:

25 (i) The information shown on the statement furnished  
26 under this subdivision.

27 (ii) If any portion of the sick pay is excludable from  
28 gross income pursuant to Article 3 (commencing with  
29 Section 17131) of Chapter 3 of Part 10 of Division 2 of the  
30 Revenue and Taxation Code, the portion that is not so  
31 excludable and the portion that is so excludable. To the  
32 extent practicable, the information required under the  
33 preceding sentence shall be furnished on or with the  
34 statement, if any, required under subdivision (a).

35 (e) The Franchise Tax Board shall be allowed access to  
36 the information filed with the department pursuant to  
37 this section.

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